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Ventures, Inc. and Steve Vachani

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FACEBOOK, INC.,

Plaintiff,

-against-

POWER VENTURES, INC. d/b/a POWER.COM, a  
California corporation; POWER VENTURES, INC.  
a Cayman Island Corporation, STEVE VACHANI,  
an individual; DOE 1, d/b/a POWER.COM, an  
individual and/or business entity of unknown nature;  
DOES 2 through 25, inclusive, individuals and/or  
business entities of unknown nature,

Defendants.

Case No. 5:08-CV-05780 JW

**DEFENDANT POWER VENTURES,  
INC.'S RESPONSE TO  
FACEBOOK, INC.'S THIRD  
MOTION TO ENLARGE TIME**

Dept: Courtroom 15, 18th Floor  
Judge: Honorable James Ware

**THE COURT SHOULD NOT GRANT FACEBOOK'S REQUEST FOR AN ADDITIONAL 90 DAYS TO RESPOND TO POWER'S MOTION FOR SUMMARY JUDGMENT**

Defendants Power Ventures, Inc. ("Power") and Steve Vachani filed their motion for summary judgment on May 6, 2011. Plaintiff Facebook, Inc. ("Facebook") has twice previously requested extensions of the time to respond to Defendants' motion. Facebook now seeks an additional 90 days until February 4, 2012 to respond. If the Court grants this motion, Facebook will have had nearly **nine months** to respond to Defendants' motion in a case that is approaching three years old.

Facebook has had ample time to gather evidence to oppose Defendants' Motion for Summary Judgment. Since Defendants filed their motion, Facebook and its expert witness Lawrence Melling have spent more than seven days scrutinizing Power's source code and received over 1,700 pages of excerpts of the code pursuant to Section 8(d) of the Stipulated Protective Order.<sup>1</sup> Declaration of L. Timothy Fisher at ¶¶ 2-3. Following the production of Power's source code, Facebook's expert requested additional documents consisting largely of Power's databases and subversion repositories. *Id.* at ¶ 4. Power does not believe these documents are remotely relevant to the claims in this case. Nevertheless, Power spent a great deal of time searching for the requested documents and produced them on October 14, 2011. *Id.* at ¶ 5. That production, spanning five DVDs, consisted of 15.6 GB of databases and 4 GB of subversion repositories.

In addition to the voluminous source code production, Facebook also obtained other significant discovery in the five months since Defendants filed their summary judgment motion. It has taken the depositions of Defendant Steve Vachani, former Power CEO Rob Pollock, and Power's former marketing consultant Ed Niehaus. It has also obtained over 350 pages of emails

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<sup>1</sup> Facebook complains that Power refused to produce its source code and failed to comply with this Court's August 18 order. Facebook's Motion at 2-3. That is simply not true. Power fully complied with the Court's order and made its entire source code available to Facebook almost immediately on August 23, 2011. Fisher Decl. at ¶ 2. Moreover, Facebook mischaracterizes the Court's order. The August 18 order states that Facebook moved to compel defendant to "produce all source code and associated documentation." Dkt. No. 127 at 1. The Court's order, however, only required Power to produce its source code. *Id.* ("In light of Defendants' agreement to produce the source code, the Court GRANTS Plaintiff's Motion to Compel and ORDERS as follows: (1) On or before **August 26, 2011**, the parties shall meet and confer to discuss the manner in which **the source code shall be produced** and reviewed to ensure compliance with the Stipulated Protective Order." (second emphasis added).

1 and other documents from Mr. Pollock and over 600 pages of documents from Mr. Niehaus.  
 2 Facebook has also received substantial document productions from Power's former COO Zak  
 3 Mandhro (480 pages) and third-party Leigh Power (1047 pages).<sup>2</sup>

4 In light of the October 14 document production, Power does not object to a short  
 5 continuance of up to 21 days so that Facebook may review the newly produced material. The 90-  
 6 day continuance requested by Facebook is wholly unreasonable in light of the significant amount  
 7 of time Facebook has already had to respond to Power's summary judgment motion and the fact  
 8 that this case is already nearly three years old. The Court should grant Facebook a short extension  
 9 of time to respond to Defendants' summary judgment motion, but should deny its request for a 90-  
 10 day extension to February 4, 2012.<sup>3</sup>

11 Dated: October 17, 2011

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13 By \_\_\_\_\_/s/\_\_\_\_\_  
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23 <sup>2</sup> Facebook also asserts that it should be granted a 90-day extension because the Court  
 24 recently took its discovery motions off calendar. Facebook's Motion at 3-5. Power has opposed  
 25 those motions and does not believe that the documents sought by those motions are relevant to this  
 26 case. *See* Dkt. Nos. 136 (9/6/11 Opposition to Motion to Compel) and 149 (9/21/11 Opposition to  
 27 Motion to Compel). Power also argued that the motions were untimely because Facebook failed to  
 28 raise any issue with Power's discovery responses for more than six months. *Id.* If Facebook had  
 not gone into hibernation for more than six months, its motions to compel would have been  
 resolved long ago.

<sup>3</sup> Similarly, Power does not object to a reasonable 30-day extension of the expert report  
 deadline, but does not believe that 60 days is appropriate in a case this old.

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